

SCHLACTER & ASSOCIATES
Attorneys for Plaintiff
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By: JED R. SCHLACTER (JRS-4874)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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|---|---|------------------------|
| CAMERON INDUSTRIES, INC., | : | 08 Civ. 6170 (DANIELS) |
| Plaintiff, | : | |
| -against- | : | <u>COMPLAINT</u> |
| MANGO USA, INC., and CONWAY STORES, INC., | : | |
| Defendants. | : | |

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Plaintiff, by its attorneys, SCHLACTER & ASSOCIATES, for its complaint against defendants, alleges:

JURISDICTION

1. This action, as more fully stated below, is for, inter alia, copyright infringement, unfair trade practices and unfair competition; arises under Title 17 of the United States Code;

jurisdiction is vested in this Court under 28 U.S.C. Sections 1338(a) and 1338(b); and proper venue exists under 28 U.S.C. Sections 1400(a) and 1391.

THE PARTIES

2. Plaintiff, CAMERON INDUSTRIES, INC. (hereinafter referred to as "Cameron") is a domestic corporation duly organized and existing under the laws of the State of New York, with an office located at 1375 Broadway, New York, NY 10018. Plaintiff is a textile converter, selling finished textile piece goods to, among others, garment manufacturers.

3. Upon information and belief, defendant, MANGO USA, INC. (hereinafter referred to as defendant or "Mango") is a domestic corporation, with a place of business at 1407 Broadway, New York, NY 10018, which purportedly manufactures, distributes and sells, among other items, ladies' wearing apparel to retail stores.

4. Upon information and belief, defendant, CONWAY STORES, INC. (hereinafter referred to as defendant or "Conway"), is a New York corporation, with a place of business at 39 West 37th Street, New York, NY, and is a retail organization that purchases wearing apparel for resale to consumers.

PLAINTIFF'S COPYRIGHTED WORK

5. In 2007 an original work of art was created by the plaintiff, and identified as "Pattern No. 1230".

6. Since on or about July 1, 2007, plaintiff's original work of art was produced on fabrics, which fabrics are also identified as Pattern No. 1230.

7. The design of Pattern No. 1230 is wholly original and is copyrightable subject matter under the laws of the United States.

8. In or about July 1, 2007, plaintiff began selling fabrics bearing the design known as Pattern No. 1230.

9. All of the provisions of Title 17 of the United States Code, and all of the laws governing Copyright, have been duly complied with; and a Certificate of Registration has been duly received from the Register of Copyrights, covering the design known as Pattern No. 1230, identified as follows: Registration No. VA 1- 631-155.

10. Plaintiff is the sole proprietor of all rights, title and interest in and to the Copyright of said design.

11. A photocopy of plaintiff's Certificate of Registration for said copyrighted design is annexed hereto as Exhibit "A".

12. Subsequent to the publication by plaintiff of its Pattern No. 1230 involved herein, defendants, with full knowledge of the rights of plaintiff therein, infringed plaintiff's Copyright on such design by reproducing, displaying, manufacturing, printing, reprinting, yarn-dyeing, publishing, vending, distributing, selling, promoting and/or advertising garments bearing a design thereon which contained substantial material copied from said copyrighted fabric design or by causing and/or participating in such reproduction by reproducing, displaying, manufacturing, printing, reprinting, yarn-dyeing, publishing, vending, distributing, selling, promoting and/or advertising, all in violation of the rights of plaintiff under Section 106 of the Copyright Law, Title 17 U.S.C.

13. A photocopy of plaintiff's copyrighted design known as Pattern No. 1230 is annexed hereto as Exhibit "B". A photocopy of defendants' said infringement is annexed hereto as Exhibit "C".

14. All of defendants' acts, as set forth herein, were performed without the permission, license or consent of plaintiff.

15. Plaintiff has gone to great expense in producing and promoting the sale of fabrics bearing its copyrighted design Pattern No. 1230.

16. Plaintiff's copyrighted design incorporated carefully prepared and fashionable color combinations, which color combinations aided greatly in the sale of garments bearing the copyrighted design.

17. As a result of plaintiff's expenditure of money and skill in the promotion for sale of fabrics bearing plaintiff's copyrighted design, the fabric design and garments have acquired a substantial market value in the trade.

18. Defendants have a design obviously copied from plaintiff's copyrighted design, which copy defendants have been offering and continue to offer for sale. The design printed on defendants' garments is substantially similar to plaintiff's copyrighted design.

19. Defendants' infringing design (Exhibits "C") is unmistakably copied from plaintiff's design (Exhibit "B").

20. Defendants' garments, when viewed by a consumer, would appear to be substantially similar to a garment of like style bearing plaintiff's copyrighted design.

21. Upon information and belief, defendants have produced their garments incorporating the copied design in a color combination virtually identical to a color combination of plaintiff's design.

22. Defendants, by their acts as aforesaid, have taken advantage of the knowledge and skill of plaintiff and of the good will developed by plaintiff and have capitalized upon the market created for plaintiff's design.

23. By defendants' use of a design and color combination virtually identical with plaintiff's design and color combination, defendants have been and will continue to be able to pass off and sell their garments as a substitute for the garments sold by customers of plaintiff.

24. The aforesaid acts of defendants in copying plaintiff's design and color combination and selling copies of same constitutes inequitable conduct, unfair trade practices and unfair competition in that defendants have thereby misappropriated plaintiff's good will and the benefits of plaintiff's knowledge, skill and expenditures in the promotion of the distinctive design and color combination, and by reason of the sale of defendants' garments in competition with the plaintiff's sales of fabrics incorporating the copyrighted design have caused irreparable injury to plaintiff in that plaintiff's market has been greatly reduced thereby, which injury will continue so long as defendants continue to market the copied design.

25. Plaintiff has been damaged by the acts of defendants alleged herein in an amount not as yet known, but believed to be in excess of One Million (\$1,000,000.00) Dollars. The infringing activities of defendants are further and continuously damaging plaintiff in a manner for which plaintiff has no adequate remedy at law.

WHEREFORE, plaintiff demands:

(1) That defendants, their agents, employees and servants be enjoined pendente lite and permanently from infringing the said Copyright No. VA 1- 631-155 of plaintiff covering its Pattern

No. 1230, in any manner and from publishing, selling, marketing or otherwise disposing of any textiles and garments imprinted with designs copied from plaintiff's said copyrighted design.

(2) That defendants be required to pay to plaintiff damages to be determined at trial, but believed to exceed One Million (\$1,000,000.00) Dollars, plus interest, which plaintiff has sustained in consequence of defendants' infringement of said Copyright and said unfair trade practices and unfair competition and to account for:

(a) all gains, profits and advantages derived by defendants in their infringement of plaintiff's Copyright or such damages as to the Court shall appear proper within the provisions of the copyright statutes, and

(b) all gains, profits and advantages derived by defendants by said unfair practices and unfair competition.

(3) That defendants be required to deliver up to be impounded during the pendency of this action, all copies of said reproduction of said works of art in their possession or under their control, and to deliver up for destruction all infringing copies and rollers, screens, plates, molds, and other matter for making such infringing copies.

(4) That defendants pay to plaintiff the costs of this action and reasonable attorneys' fees to be allowed to the plaintiff by the Court.

(5) That plaintiff have such other and further relief as is just.

Dated: New York, New York
June 19, 2008

SCHLACTER & ASSOCIATES
Attorneys for Plaintiff

By: 

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EXHIBIT A

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters

Register of Copyrights, United States of America

U.S. COPYRIGHT OFFICE
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Registration Number:

VA 1-631-155

Effective date of
registration:

April 29, 2008

Title

Title of Work: Pattern No. 1230

Nature of Work: Design for Fabric

Completion/Publication

Year of Completion: 2007

Date of 1st Publication: July 1, 2007

Nation of 1st Publication: United States

Author

Author: Cameron Industries, Inc.

Author Created: 2-Dimensional artwork

Work made for hire: Yes

Citizen of: United States

Anonymous: No

Pseudonymous: No

Copyright claimant

Copyright Claimant: Cameron Industries, Inc.

1375 Broadway, New York, NY 10018

Limitation of copyright claim

Previously registered: No

Certification

Name: Soheil Khayyam, authorized agent of Cameron Industries, Inc.

Date: April 24, 2008

IPN#:



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Registration #: VA0001631155

Service Request #: 1-58952386

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EXHIBIT B

EXHIBIT C

